



**Citation:** R. Loretelli (2019) The first English translation of *Dei delitti e delle pene*. A question of sources and modifications. *Diciottesimo Secolo* Vol. 4: 95-106. doi: 10.13128/ds-25442

**Copyright:** © 2019 R. Loretelli. This is an open access, peer-reviewed article published by Firenze University Press (<http://www.fupress.net/index.php/ds>) and distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

**Data Availability Statement:** All relevant data are within the paper and its Supporting Information files.

**Competing Interests:** The Author(s) declare(s) no conflict of interest.

Saggi

## The first English translation of *Dei delitti e delle pene*. A question of sources and modifications\*

ROSAMARIA LORETELLI

*Università degli Studi di Napoli "Federico II"*

**Abstract.** Unlike the first French translation, which has received adequate scholarly attention, the first English translation, printed in London in 1767 for the Whig book-seller, journalist and advocate for the freedom of the press John Almon, has as yet been neglected by research. Following on from my previous essay, which investigated the editorial and political contexts, this study focuses on the translated text, enquiring about its sources and faithfulness to the original. Indeed, a collation with one of the two Italian sixth editions (1766) and with Morellet's version (dated 1766, but printed on 28 December 1765) revealed that this text, which was the main channel for the dissemination of Beccaria's ideas in the English speaking world, used both the Italian original and the French version as sources. In addition and most strikingly, the collation also showed that the translation contains modifications of significant passages, which appear in neither source. They intervene surprisingly on passages whose interpretation is still debated among present day scholars. The present article interprets changes introduced in chapter II ("Of the Right to Punish") and in chapter XXVIII ("Of the Punishment of Death").

**Keywords.** Cesare Beccaria, *On Crimes and Punishments*, Eighteenth-Century Translations.

In a letter from London of December 16, 1766, Beccaria's friend Alessandro Verri wrote to his brother Pietro telling him that the publisher Pietro Molini, at whose home he was staying, had recently published an Italian edition of *Dei delitti e delle pene*. But he added that sales had been poor and accordingly, many copies were sent to Paris where they sold out<sup>1</sup>.

\* I am grateful to Luigi Ferrajoli and Philippe Audegean for generously answering my queries. Honesty requires however that I relieve them from all responsibility for what I have done with their answers.

<sup>1</sup> In the same letter, Alessandro tells his brother that Pietro Molini was brother to Giovan Claudio Molini who had recently published an Italian edition of *Dei delitti e delle pene* in Paris (P. e A. Verri, *Viaggio a Parigi e Londra (1766-1767)*, a cura di G. Gaspari, Adelphi, Milano 1980, p. 148). The edition published by Giovan Claudio is the sixth edition, «Harlem, et se vend à Paris chez Molini Libraire, Quai des Augustins», 1766. Probably the edition by Pietro Molini mentioned by Alessandro is the other sixth edition, «Harlem, 1766», as recent research seems to believe, in spite of what previous scholar maintained. See R. Pasta, *Tra Firenze, Napoli e l'Europa: Giuseppe Molini senior*, in A.M. Rao (a cura di), *Editoria e cultura a Napoli nel XVIII secolo*, Liguori, Napoli 1998, pp. 251-283: 261; and L. Firpo, *Le edizioni italiane del Dei delitti e delle pene*, in *Edizione nazio-*

Evidently, the book in *the original* Italian had almost no market in England. But when the first English translation appeared in London in early 1767, it sold very well. Another edition was published in Dublin in the same year, and others in the years immediately following, in England, Scotland and America. This English translation was the main channel for the dissemination of Beccaria's thinking in the English-speaking world.

A few readers accessed *Dei delitti e delle pene* in Italian, of course, such as Thomas Jefferson and John Adams, who drew inspiration from Beccaria when they wrote the *Declaration of Independence*, having discussed the Italian text of the book with Filippo Mazzei<sup>2</sup>. Probably Benjamin Franklin also read *Dei delitti* in Italian<sup>3</sup>; and Jeremy Bentham possessed the English edition, as well as a copy in Italian and one in French<sup>4</sup>. George Washington<sup>5</sup>, however, and most jurists<sup>6</sup>, judges<sup>7</sup>, journalists, novelists and the English reading public in general accessed Beccaria's ideas through the English translation.

To the best of my knowledge, nothing has so far been written on the text of this translation or on its sources and fidelity to the original. The aim of the present article is to fill this gap. This will provide a better understanding of the function assigned to *Dei delitti e delle pene* by the people and the milieu who prompted its translation<sup>8</sup>, as well as of the modes of its reception

in Britain<sup>9</sup> and of the very presence of Beccaria's ideas in the English speaking world.

The first English translation of *Dei delitti e delle pene* was published in February 1767. The year of publication is printed on the title-page, and the month can be established by merging information gleaned from the letters exchanged between Alessandro Verri and his brother Pietro with the entries in the April issues of «The Scots Magazine» and «The Critical Review».

In a letter dated 15 January 1767, Alessandro wrote that Beccaria's book was being translated into English and that it would shortly be published; on 8 February, Pietro replied that he had informed Beccaria, and on 26 February he asked for a copy of the book with the reviews it had received in Britain<sup>10</sup>. The reviews were enthusiastic. «The Critical Review» referred to the text as «one of the most original books which the present age hath produced», and «The Annual Register» published many extracts in a long piece by Edmund Burke, who was an MP at the time and already famous for his *Enquiry into the Sublime and the Beautiful*<sup>11</sup>.

But a question needs to be asked: what was the exact text which they were reviewing? Was it faithful to Beccaria's original or was it based on the French version, the language of eighteenth-century cultural mediation? And again, if it changed the original, was it to render it palatable to the English public, or to enhance some other project? Our collation has answered these questions with evidence which we will illustrate and try to interpret in the following pages.

nale delle opere di Cesare Beccaria [hereafter EN], vol. I. *Dei delitti e delle pene*, a cura di G. Francioni, Mediobanca, Milano 1984, pp. 466-473.

<sup>2</sup> E. Tortarolo, *Illuminismo e rivoluzioni. Biografia politica di Filippo Mazzei*, Franco Angeli, Milano 1986, pp. 42-43. For Mazzei's letters to Jefferson and Adams, see *Filippo Mazzei: scelta di scritti e lettere*, a cura di M. Marchione, Edizioni del Palazzo, Prato 1984, vol. I, p. 9. J.D. Bessler gives valuable information about the American readers of *On Crimes and Punishments* throughout his *The Birth of American Law. An Italian Philosopher and the American Revolution*, Carolina Academic Pr., Durham 2014. For the libraries of Thomas Jefferson and John Adams which contained copies of Italian editions, see p. 186.

<sup>3</sup> M. Maestro, *Benjamin Franklin and the Penal Law*, «Journal of the History of Ideas», 36, 1975, pp. 551-562: 554.

<sup>4</sup> I would like to thank Philip Schofield for this piece of information.

<sup>5</sup> George Washington read Beccaria in the English translation (Bessler, *The Birth of American Law*, cit. p. 186). Others probably read André Morellet's French translation, which was also reprinted in America.

<sup>6</sup> In a persuasive article, which assesses the early impact of Beccaria's *On Crimes and Punishments* on English discussions on punishment, focusing mainly on William Blackstone, William Eden and Jeremy Bentham, Anthony Draper maintains that Beccaria's influence was particularly striking in England and had profound consequences for English approaches to punishment. A.J. Draper, *Cesare Beccaria's influence on early discussions of punishment, 1764-1789*, «History of European Ideas», 26, 2000, pp. 177-199.

<sup>7</sup> J. Beattie, *Crime and the Courts in England. 1660-1800*, Clarendon Press, Oxford 1986, pp. 223, 555-556, 558, 628-629, 632.

<sup>8</sup> For external evidence about the milieu which promoted this translation, see R. Loretelli, *The First English Translation of Cesare Beccaria's*

*On Crimes and Punishments. Uncovering the Editorial and Political Contexts*, «Diciottesimo secolo», 3, 2017, pp. 1-22.

<sup>9</sup> For its dissemination in America, see Bessler, *The Birth of American Law*, cit., and, by the same, *The Celebrated Marquis. An Italian Noble and the Making of the Modern World*, Carolina Academic Press, Durham 2018, ch. V and VI.

<sup>10</sup> P. e A. Verri, *Viaggio a Parigi e Londra*, a cura di G. Gaspari, Adelphi, Milano 1980, pp. 24, 259, and 320.

<sup>11</sup> «The Critical Review», 23, April 23rd 1767 (p. 257); «A Catalogue of New Books» of the April issue of «The Scots Magazine», p. 210. The book is listed neither in the February issue (which excludes January as the month of publication) nor in that of March. However, the column for the new books in the March issue is completely occupied by a summary of Adam Ferguson's *An Essay on the History of Civil Society*, and ends by informing readers that «The rest of the books are deferred». If we align this piece of information with Pietro Verri's request at the end of February, we can deduce that the translation was published in February. Edmund Burke was one of the founders of the «Annual Register», to which he contributed with reviews on law and politics. P.J. Stanlis, *Edmund Burke and the Natural Law*, Transaction Publishers, New Brunswick (NJ) 2009 (1958), p. 37.

## SOURCES.

In the 1958 introduction to *Dei delitti*<sup>12</sup>, Franco Venturi drew attention to the first English translation, mentioning the unknown translator's critique of the French version and implicitly endorsing the idea that the English rendering was faithful to the original. A few years later, however, at a conference organized by him and Luigi Firpo for the 200th anniversary of the first Italian edition, Leo Radzinowicz mentioned an unspecified «French edition» as the source for the first English translation. At the same conference, H.L.A. Hart underwrote Radzinowicz's information and explicitly named the Enlightenment *philosophe* André Morellet as the author of the French translation<sup>13</sup>. The relation of the English with the French translation was stated again more recently by Frederick Rosen in one of the introductions to a volume of *The Collected Works of Jeremy Bentham*.<sup>14</sup> Whereas, in 2008, Aaron Thomas took a more cautious stance, mentioning the passage of the translator's preface in which he criticizes Morellet's reshuffling of Beccaria's chapters and pointing out that «even this translator (i.e., the English translator) admitted to permitting “a paragraph or two” to stand where Morellet left them». Thomas concluded that «Fidelity to Beccaria's original text could not therefore be automatically assumed».<sup>15</sup>

The question remained unanswered. Which of the scholars was right? Which is the true source for the English translation? The answer could emerge only from a collation with Morellet's *Traité des délits et des pei-*

*nes* and the Italian original at the same time. We have therefore proceeded to collate the three texts, choosing the first editions of the English and the French<sup>16</sup> translations, and one of the two Italian sixth editions<sup>17</sup>.

The title-page of the English translation reads: *An Essay on Crimes and Punishments, translated from the Italian; with a Commentary attributed to Monsieur de Voltaire; translated from the French*. There follows the quotation from Francis Bacon and, at the foot of the page, the name of the publisher: «London: Printed for J. Almon, opposite Burlington-House, Piccadilly, MDC-CLXVII». Pages III to VIII carry the translator's preface, and pages IX to XII, a table of contents for both the *Essay* and Voltaire's *Commentary*.

It should be noted that the French and the English translations modify Beccaria's title, but not both in the same way. Morellet's systematic reordering of the original text is anticipated by the term *Traité*<sup>18</sup> in his title. Whereas, more in tune with Beccaria's title, *Essay* sounds less assertive, reflecting a philosophical tradition which goes from Montaigne and Bacon to Locke and Hume. Moreover, the publisher John Almon was a notable figure in the Opposition, a journalist, an advocate for the freedom of the press and a friend of Lord Temple and John Wilkes<sup>19</sup>.

The first pages of the English publication do not contain some of the texts present in the fifth and in the two sixth Italian editions. Those titled «A chi legge» [*To the reader*] and «Avviso» [*Notice*] are missing; also missing are De Soria's *Giudizio di celebre professore* and *Risposta* to Facchinei.<sup>20</sup> Indeed, if the Italian fifth and sixth editions number more than three hundred pages, the English translation has only 179 pages of the *Essay*

<sup>12</sup> Venturi's edition was based on the fifth Italian edition (March 1766), the last, as he was the first to ascertain, for which there is explicit evidence of authorial revision. See F. Venturi, *Introduzione a Dei delitti e delle pene*, in *La letteratura italiana. Storie e testi*, vol. 46/III. *Illuministi italiani. Riformatori lombardi, piemontesi e toscani*, a cura di F. Venturi, Ricciardi, Milano 1958 pp. 4-13. For the history of this edition, see G. Francioni, *La “quinta” edizione e le testimonianze autografe*, and L. Firpo, *La “quinta” edizione* (Livorno, marzo 1766), in *EN*, vol. I, cit., respectively, pp. 292-304 and 444-466.

<sup>13</sup> L. Radzinowicz, *Cesare Beccaria and the English System of Criminal Justice. A Reciprocal Relationship*, and H.L.A. Hart, *Beccaria and Bentham*, in *Atti del convegno internazionale su Cesare Beccaria promosso dall'Accademia delle scienze di Torino nel secondo centenario dell'opera “Dei delitti e delle pene”* (4-6 ott. 1964), Accademia delle scienze, Torino 1966 («Memoria dell'Accademia delle Scienze di Torino, Classe di Scienze Morali, Storiche e Filologiche», s. IV, nr. 9), respectively, pp. 57-66, and pp. 21-29.

<sup>14</sup> The other introduction was by H.L.A. Hart. *The Collected Works of Jeremy Bentham: An Introduction to the Principles of Morals and Legislation*, ed. by J.H. Burns and H.L.A. Hart, Oxford University Press, Oxford 1996 (reprinted in 2005), note 106, p. LXVI.

<sup>15</sup> Aaron Thomas, *Preface* (p. xxx), in C. Beccaria, *On Crimes and Punishments and other writings*, ed. by A. Thomas, transl. by A. Thomas and J. Parzen, Introduction by A. Burgio, University of Toronto Press, Toronto-Buffalo-London 2008.

<sup>16</sup> *Traité des délits et des peines, traduit de l'Italien*, D'après la troisième Edition, revue, corrigée, et augmentée par l'Auteur. Avec des Additions de l'Auteur, qui n'ont pas encore paru en Italien. Lausanne [Paris] 1766.

<sup>17</sup> *Dei delitti e delle pene, edizione sesta, di nuovo corretta ed accresciuta*, Harlem 1766. This edition probably appeared in the Autumn of 1766, while the other sixth edition (Harlem, et se vend à Paris chez Molini Libraire, Quai des Augustins) was published in the August of 1766 by Giovan Claudio Molini brother to that Pietro Molini who hosted Alessandro Verri in London (see note 1 in the present article). When the English translation was published, therefore, three Italian editions with the same text were in print, the fifth and the two sixth editions.

<sup>18</sup> For the philosophical implications of the linguistic choices of *Traité* and of *Essay*, see J. Pandolfi, *Morellet traducteur de Beccaria*, in A. Luzi (a cura di), *Il genio delle lingue. Le traduzioni nel '700 in area franco-italiana*, Treccani, Roma 1989, pp. 291-316: 296.

<sup>19</sup> D.D. Rogers, *Bookseller as Rogue: John Almon and the Politics of Eighteenth-Century Publishing*, Peter Lang, New York-Bern-Frankfurt 1986. For their connection with the translation of *Dei delitti e delle pene*, see my *The First English Translation*, cit., pp. 8-18.

<sup>20</sup> *Avviso*, which introduces the fifth Italian edition, does not appear in some impressions; *Giudizio*, and *Risposta* (written by Pietro Verri, with Alessandro's help) do not appear in Morellet. For the reasons, see Francioni *Nota al testo*, in *EN*, cit., vol. I, pp. 301-302.

on *Crimes and Punishments*, plus 79 pages of Voltaire's *Commentary*.

A word needs to be said about the presence of Voltaire's text. It is important to note that this was the very first edition of Voltaire's *Commentary* in a foreign language. The book had been published anonymously in France in early September 1766 and, by February 1767, it had run through six editions, plus a few pirated ones. An Italian version would appear as a separate volume a few months after the English translation, but it was only in 1769 that it would be issued in one volume with Beccaria's *Dei delitti e delle pene*<sup>21</sup>.

When the English translation appeared, André Morellet's very successful French version had already been in print for more than a year<sup>22</sup>, since it had been published before the Italian fifth edition, although Beccaria had informed the *philosophe* of what he would later insert into that edition.<sup>23</sup> In his preface, the English translator admits that he knows Morellet's text, but criticizes his modifications («he hath not only transposed every chapter, but every paragraph in the whole book»), stating that he himself had opted for preserving «the original order». However, he adds, «in a passage or two» he «had taken the liberty to restore [passages] to the chapters to which they evidently belong and from which they must have been accidentally detached»<sup>24</sup>. Morellet had used the same justification for his own reshuffling of the original chapters, saying that he had restored «l'ordre le plus naturel», «par quelques simples transpositions de Chapitres ou de parties de Chapitres»<sup>25</sup>.

However, despite his critique of Morellet, we do not need to go far in order to find evidence of the translator's knowing the French version very well and of using it, although not slavishly. More: no effort is required to find examples of the fact that he turned sometimes to Morellet and at other times to the Italian original; indeed, every page shows that the author of the translation had both the Italian text and Morellet on his desk.

<sup>21</sup> For the publishing history of the *Commentaire*, see Firpo, *Le edizioni italiane del Dei delitti e delle pene*, in *EN*, cit., vol. I, pp. 487-495.

<sup>22</sup> Published on December 28, 1765, although dated 1766. G. Francioni, *Nota al testo*, in *EN*, cit., vol. I, p. 292.

<sup>23</sup> Morellet's version was based on the third edition. After the publication of a pirated Italian fourth edition, Beccaria's publisher Coltellini called fifth edition the one he was preparing. On this, see Francioni, *Nota al testo*, in *EN*, cit., vol. I, pp. 304-315. See also Pandolfi, *Morellet traducteur de Beccaria*, cit.; and S. Bersezio, *La traduzione francese del Dei delitti e delle pene di André Morellet*, in *Il caso Beccaria*, Il Mulino, Bologna 2016, pp. 111-137. For other French translations, see P. Audegean, *L'ombre de Morellet. Les premières traductions françaises de Beccaria (1765-1822)*, in *Cesare Beccaria. La controverse pénale XVIIIe-XXIe siècle*, éd. par M. Porret et É. Salvi, P.U.R., Rennes 2015, pp. 119-132.

<sup>24</sup> *An Essay on crimes and Punishments*, London 1767, p. v.

<sup>25</sup> *Ibidem*, p. viii.

The very first paragraph of Beccaria's *Introduzione* runs:

*Gli uomini lasciano per lo più in abbandono i più importanti regolamenti alla giornaliera prudenza, o alla discrezione di quelli, l'interesse dei quali è di opporsi alle più provvide Leggi, che per natura rendono universali i vantaggi, e resistono a quello sforzo, per cui tendono a condensarsi in pochi, riponendo da una parte il colmo della potenza e della felicità, e dall'altra tutta la debolezza e la miseria. Perciò se non dopo essere passati frammezzo mille errori nelle cose più essenziali alla vita e alla libertà, dopo una stanchezza di soffrire i mali, giunti all'estremo, non s'inducano a rimediare ai disordini che gli opprimono...*<sup>26</sup>

This is Morellet:

*Parmi les hommes réunis, il s'exerce un effort continuel qui tend à placer dans une partie de la société toute la puissance et tout le bonheur, et dans l'autre toute la misère et toute la faiblesse. L'effet des bonnes lois est de s'opposer sans cesse à cet effort. Mais les hommes abandonnent ordinairement le soin de régler les choses les plus importantes à la prudence du moment ou à la discrétion de ceux-là mêmes qui sont intéressés à rejeter les meilleures institutions. Aussi n'est-ce qu'aux dernières extrémités, et lassés de souffrir, qu'ils se déterminent à remédier aux maux dont ils sont accablés. Ce n'est qu'après avoir passé par mille erreurs funestes à leur vie et à leur liberté*<sup>27</sup>.

This is the English translator's rendering:

*[“In every human society, there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the other to the extreme of weakness and misery. The intent of good laws is to oppose this effect,/A] [and to diffuse their influence, universally, and equally./B] [But men generally abandon the care of their most important concerns to the uncertain prudence, and direction of those, whose interest it is to reject the best, and wisest institutions;/C] [and it is not till they have been led into a thousand mistakes in matters, the most essential to their lives and liberties, and are weary of suffering, that they can be induced.../D]”*<sup>28</sup>.

<sup>26</sup> *Dei delitti e delle pene*, Harlem 1766, cit., pp. 9-10.

<sup>27</sup> I have modernised the spelling, since this aspect of Morellet's text is not the focus of the present article.

<sup>28</sup> What is marked with an A at the end comes from Morellet. What is marked with a B is not in Morellet, but freely translates a sentence which in the Italian original comes slightly later («rendono universali i vantaggi e resistono a quello sforzo per cui tendono a condensarsi in pochi»). C contains the incipit of the Italian text. Here, Morellet translates «leggi» with «institutions», and the English translator with «institutions», evidently imitating the French solution. D: this part and beyond follow the lesson of the Italian original. In the English translation, the *Introduction* ends at the ending of the Italian original, while the French translation inserted at this point passages which in the original are in chapters VIII and IX.

This method is used throughout the translation, showing that its author felt free to choose either one or other of the sources within the same paragraph and sometimes even within the same sentence. This passage from the beginning of the *Introduzione* is only the first of a great number of such instances, but we shall avoid pointless repetition.

I would like, however, to draw attention to three further examples: clauses which, as Gianni Francioni has highlighted, appear in the Italian original but not in the French version. Surprisingly enough, in two cases the English translation follows Morellet, but in the third it opts for Beccaria's original<sup>29</sup>. The two passages which appear neither in the French nor in the English translation are: «Le fissazioni dei limiti sono così necessarie nella politica, come nella matematica, tanto nella misura del bene pubblico, quanto nella misura delle grandezze»<sup>30</sup> and: «Questa è la cagione, per cui le offese ne fanno nascere delle nuove, che l'odio è un sentimento, tanto più durevole dell'amore, quanto il primo prende la sua forza dalla continuazione degli atti, che indebolisce il secondo»<sup>31</sup>. In the Italian original, they are in chapters XXXIV («*Dei debitori*»/«*Of Bankrupts*») and XL («*False idee di utilità*»/«*Of false Ideas of Utility*»), respectively.

In the third case, however, the passage which is missing in Morellet, is present in the English version, proving once more that the translator accessed Beccaria's book in both languages, choosing from time to time which text to use. In the Italian original of chapter XXXIII («*Contrabbandi*»/«*Of Smuggling*») we read: «Chiunque dà pene infamanti a delitti, che non sono reputati tali dagli uomini, scema il sentimento d'infamia per quelli, che lo sono»<sup>32</sup>. In Morellet the passage does not appear, while in the English version we find: «By inflicting infamous punishments, for crimes that are not reputed so, we destroy that idea where it may be useful». If the English text does not follow Morellet here, a few paragraphs later, however, it is again dependent on his version, thus proceeding with *ad hoc* choices until the last page of the book.

These few instances from among the many we have come across in the course of our collation point to the conclusion that, although the English translator did not accept Morellet's ordering of the chapters, neither did he move many paragraphs (more, however, than the «one or two» he declared in the preface), he sometimes fol-

lowed the French translation. And, at other times however, he reverted to the Italian original.

Thus, the question of the sources of the English version of *Dei delitti e delle pene* leads to an incontrovertible solution: the translator had the two texts in front of him and chose either one or the other to translate from, according to a criterion which seems to be purely his own. What was this criterion? More: were Beccaria's original and Morellet's version the English translator's only options, or had he other strings to his bow? The collation also revealed information on these points.

#### MODIFICATIONS AS INTERPRETATION. CHAPTER II: «OF THE RIGHT TO PUNISH».

The most apparent criterion behind the translator's choices is a search for clarity. He tends to accept Morellet's version where it disambiguates the Italian, sometimes just to render it easily readable, sometimes with more fundamental purposes in mind. His intention, however, does not seem to be to simplify the content; but rather, to avoid the risk of misunderstandings. The translation aims at expressing ideas as clearly and as completely as possible, resolving the ambiguities of certain passages. This practice pervades the whole translation, leading its author at times to use Morellet, at other times to revert to the Italian original, and sometimes even to make changes of his own.

But there is more to be said: disambiguating a text involves interpretation, a choice between possible meanings, the *reductio ad unum* of polysemic ambiguity. Even when it is the outcome of superficial haste, resulting in unsatisfactory understanding, disambiguation implies a hermeneutic move. The more so in the case of this translation, which is linguistically accurate, incisive and very careful not to blur meanings. Therefore, all changes made here to the Italian original cannot be dismissed as irrelevant; rather, they should be viewed as a philosophical (and perhaps political) stance taken by whoever was involved in the translation.

In actual fact, our collation has brought to light changes which all reside within a single coherent perspective, a perspective which we shall attempt to illustrate in the following pages. We shall draw attention to modifications, present in two relevant and complex passages, which point to foundational aspects of Beccaria's thinking. In these cases, the translation shows clear signs of interpretation. One change occurs in chapter II («*Diritto di punire*»/«*Of the Right to punish*»), and another in chapter XXVIII («*Della pena di morte*»/«*On the Punishment of Death*»).

<sup>29</sup> Francioni explains the reasons why Morellet omitted the three passages in *Nota al testo*, in *EN*, cit., vol. I, p. 309.

<sup>30</sup> *Dei delitti e delle pene*, Harlem 1766, cit., p. 167.

<sup>31</sup> *Ibidem*, p. 187.

<sup>32</sup> *Ibidem*, p. 160.

In chapter II Beccaria famously states that by virtue of the social contract citizens yielded the «smallest portion possible» («minima porzione possibile») of their liberty, «as much only as was sufficient to engage others to defend it»<sup>33</sup>. With a formulation which has since become standard, Luigi Ferrajoli called this parsimony principle «diritto penale minimo» (minimum penal law).<sup>34</sup> Further on in this chapter, Beccaria writes:

*L'aggregato di queste minime porzioni possibili forma il diritto di punire, tutto il di più è abuso e non giustizia; è Fatto, ma non già Diritto. Osservate, che la parola Diritto non è contraddittoria alla parola Forza; ma la prima è piuttosto una modificazione della seconda, cioè la modificazione più utile al maggior numero. E per giustizia io non intendo altro che il vincolo necessario per tenere uniti gl'interessi particolari, che senz'esso si scioglierebbero nell'antico stato di insociabilità: tutte le pene, che oltrepassano la necessità di conservare questo vincolo sono ingiuste di lor natura. Bisogna guardarsi di non attaccare a questa parola Giustizia l'idea di qualche cosa di reale, come di una forza fisica o di un Essere esistente»<sup>35</sup>.*

This is how the 1767 English translation renders the passage:

*The aggregate of these, the smallest portions possible, forms the right of punishing: all that extends beyond this is abuse, not justice. Observe, that by justice I understand nothing more, than that bond, which is necessary to keep the interest of individuals united; without which, men would return to their original state of barbarity: All punishments, which exceed the necessity of preserving this bond, are in their nature unjust. We should be cautious how we associate with the word justice, an idea of any thing real, such as a physical power, or a being that actually exists»<sup>36</sup>.*

The modification present in the English version is anything but banal and insignificant. It consists in the omission of the following sentences, which I quote from the modern translation by Aaron Thomas and Jeremy Parzen: «it is a matter of fact, not of right. Note that the word *right* is not in contradiction with the word *force*; rather, the former is a modification of the latter, that is, the modification most useful to the greatest number»<sup>37</sup>.

<sup>33</sup> *An Essay on Crimes and Punishments*, cit., p. 9.

<sup>34</sup> L. Ferrajoli, *Diritto e ragione. Teoria del garantismo penale*, Laterza, Roma-Bari 2011 (1989), pp. 197, 325-339.

<sup>35</sup> *Dei delitti e delle pene*, Harlem 1766, cit., pp. 17-18. Italics in the Italian original. For an interpretation of this passage, see Ph. Audegean, *Cesare Beccaria, filosofo europeo* Carocci, Roma 2014 (2010), pp. 113 ff.

<sup>36</sup> *An Essay on Crimes and Punishments*, cit., p. 9.

<sup>37</sup> I am going to use the 1767 translation for all passages where it faithfully follows Beccaria's original. Wherever it does not, or where passages are omitted, I am using Aaron Thomas's modern translation. For this

At first sight, this omission may appear as the result of no more than a search for clarity and simplicity, which is one of the things it achieves. At the same time, however, it is a precise act of interpretation. If we view this omission against the background of Beccaria's ideas concerning the relation between force and law, the hermeneutic move and the interpretative option behind this change become evident.

Departing from the preceeding tradition where *jus* and *potestas*, i.e. law and force were never presented as opposed to each other, Beccaria, highly innovative also on this point, separates them. In a fundamental article which sheds light on this aspect of Beccaria's thinking, Gianni Francioni draws attention to several passages of *Dei delitti e delle pene* in which «forza» (force) is repeatedly opposed to «diritto» (law, legitimated by the social contract)<sup>38</sup>. Force is opposed to law and justice, for example, in chapter XVI («Of Torture»), where the Milanese philosopher writes: «Quale è dunque quel diritto, se non quello della forza, che dia la podestà ad un Giudice di dare una pena ad un Cittadino, mentre si dubita se sia reo o innocente?»<sup>39</sup>; and in chapter XXIX («Della cattura»), where we find:

*Ma per qual ragione è così diverso ai tempi nostri l'esito di un innocente? Perché sembra, che nel presente sistema criminale, secondo l'opinione degli uomini, prevalga l'idea della forza e della prepotenza, a quella della giustizia; perché si gettano confusi nella stessa caverna gli accusati e i convinti; perché la prigionia è piuttosto un supplizio, che una custodia del reo, e perché la forza interna tutrice delle leggi è separata dalla esterna difenditrice del Trono e della Nazione, quando unite dovrebbero essere»<sup>40</sup>.*

In Beccaria's thinking law and force are doubtlessly separated, as Francioni concludes after having exposed

passage, see C. Beccaria, *On Crimes and Punishments and Other Writings*, ed. Thomas, cit., p. 12.

<sup>38</sup> G. Francioni, «*Ius*» e «*potestas*». Beccaria e la pena di morte, «*Révue d'histoire du droit de punir*», II, 2016 (monographic issue on Cesare Beccaria), pp. 13-49.

<sup>39</sup> *Dei delitti e delle pene*, Harlem 1766, cit., p. 69. «What right, then, but that of power, can authorize the punishment of a citizen, so long as there remains any doubt of his guilt?» (*An Essay on Crimes and Punishments*, cit., p. 57). It is worth checking this passage in Morellet: «Quel autre droit que celui de la force peut autoriser un Juge à infliger une peine à un citoyen, lorsqu'on doute encore s'il est innocent ou coupable?».

<sup>40</sup> *Dei delitti e delle pene*, Harlem 1766, cit., p. 136. «But why is the fate of an innocent person so different in this age? It is, because the present system of penal laws presents to our minds an idea of power rather than of justice. It is, because the accused and convicted are thrown indiscriminately into the same prison of the accused; and because the interior power, which defends the laws, and the exterior, which defends the throne and kingdom are separate, when they should be united» (*An Essay on Crimes and Punishment*, cit., p. 119).

more of such evidence<sup>41</sup>.

If we now revert to the passage quoted above from chapter II and examine it in light of what has just been said, we can – credibly, I believe – hypothesize the reason why the English translator might have decided to modify it. It is that the part he omitted carries an ambiguity precisely in the area of the relation between force and law. The sentence «la parola *diritto* non è contraddittoria alla parola *forza*, ma la prima è piuttosto una modificazione della seconda, cioè la modificazione più utile al maggior numero» is ambiguous. It could mean that force guarantees the compliance with the law<sup>42</sup>; but it could also signify that there is a connection between force and the origin of law, legitimising law by recourse to the concept of the utility of the greatest number. An option which would be in contradiction with the other occurrences where law and force are radically and unambiguously separated. By eliminating this passage, the English version avoided all risks of such contradiction, thus bringing the paragraph into harmony with one of the ideas which are right at the heart of Beccaria's project.

Before concluding on this passage, mention must be made of the fact that the omission to which we drew attention is not to be found in Morellet, whose translation in this case is faithful to the original. The omission is the English translator's initiative and reveals, it would seem, his philosophical awareness and deep understanding of Beccaria's work.

#### MODIFICATIONS AS INTERPRETATION. CHAPTER XXVIII: "OF THE PUNISHMENT OF DEATH".

If we now turn to chapter XXVIII, «Della pena di morte» (Of the Punishment of Death), we also discover consistent changes. This time, however, most of them are also in Morellet. Most, but not all: another proof of the fact that the English translator's interpretative strategy did not stem from slavish fidelity to Morellet, but from a project of his own.

This chapter, which is the longest in the book, begins with a paragraph which discusses whether or not the death penalty is founded on a right to punish deriving from the social contract. The conclusion reached is

that it has no such foundation. The second and third paragraphs continue:

*Non è dunque la pena di morte un Diritto, mentre ho dimostrato che tale, essere non può; ma è una guerra della Nazione con un Cittadino, perché giudica necessaria, o utile la distruzione del suo Essere: Ma se dimostrerò non essere la morte né utile, né necessaria, avrò vinto la causa dell'umanità.*

*La morte di un Cittadino non può credersi necessaria, che per due motivi. Il primo, quando anche privo di libertà egli abbia ancora tali relazioni, e tal potenza, che interessi la sicurezza della Nazione; quando la sua esistenza possa produrre una rivoluzione pericolosa nella forma di governo stabilita. La morte di qualche Cittadino divien dunque necessaria quando la Nazione ricupera, o perde la sua libertà, o nel tempo dell'Anarchia, quando i disordini stessi tengon luogo di leggi; ma durante il tranquillo regno delle leggi in una forma di governo, per la quale i voti della Nazione siano riuniti, ben munita al di fuori, e al di dentro dalla forza, e dall'opinione forse più efficace della forza medesima, dove il comando non è che presso il vero Sovrano, dove le ricchezze comprano piaceri, e non autorità, io non veggio necessità alcuna di distruggere un Cittadino, se non quando la di lui morte fosse il vero e unico freno per distogliere gli altri dal commettere delitti, secondo motivo, per cui può credersi giusta, e necessaria la pena di morte<sup>43</sup>.*

Rounding off the argument developed in the first paragraph, the second paragraph (the first of the two quoted above) repeats conclusively that no right authorizes the death penalty. Under the social contract, the death penalty is always illegitimate. It is a war moved by a nation against one of its citizens, whose destruction the nation deems either necessary or useful. The paragraph closes with a sentence which states the aim of the rest of the chapter, which is to prove that the death penalty is in fact neither necessary nor useful.

The third paragraph assigns centre stage to necessity. Only in two cases («due motivi»), says the Italian original, the death of a citizen may be considered necessary. The first case is when a citizen «retains such connections and such power that he endangers the security of the nation even when deprived of his liberty, that is, when his very existence can provoke a dangerous revolution in the established form of government. The death of such a citizen, then, becomes necessary when a nation is recovering or losing its liberty; or in time of anarchy, when disorder itself takes the place of laws», but not during the normal functioning of a State («regno tranquillo della legislazione»). This is the modern faithful translation of the paragraph<sup>44</sup>. As we shall see, the 1767 version is different.

<sup>41</sup> Francioni, "Ius" e "potestas", cit., p. 31, note 44.

<sup>42</sup> In the National Edition, Francioni interprets this passage in light of the many others which, in *Dei delitti*, unambiguously separate force from law: «L'affermazione può essere fraintesa, se non collegata ad altri passi del *Dei delitti*, che mostrano come per Beccaria forza e diritto non si identifichino [...]. La forza dunque non origina né legittima il diritto ma ne garantisce l'osservanza ai fini dell'utilità, se non di tutti, del "maggior numero"» (EN, p. 32, note 1).

<sup>43</sup> *Dei delitti e delle pene* VI, Harlem 1766, cit., pp. 118-120.

<sup>44</sup> Beccaria, *On Crimes and Punishments and Other Writings*, cit., p. 52.

The hermeneutic difficulty provided by this ‘first case’ can be summarized by the following question: does it describe a situation in which the social contract, although at risk, may be considered still existing; or is the situation one of such anarchy that the social contract is no longer binding, since individuals have reverted to the state of nature? The point at issue is a possible exception under the rule of law to Beccaria’s rejection of the death penalty. Opinions diverge amongst present-day scholars. According to some, here Beccaria is making a distinction between a ‘normal’ and an ‘exceptional’ state of things, both of them within the social contract. Although with arguments differently nuanced, these scholars maintain that, according to Beccaria, an exceptional state of things would impose a suspension of the rules, and in such a case the Milanese philosopher would not be against the death penalty<sup>45</sup>. Of a different opinion is Gianni Francioni, who upholds that within the social contract Beccaria conceives of no exceptions to a total abolition of the death penalty. The situation contemplated here is, in Francioni’s opinion, of «a revolutionary disruption of the social contract, of a dissolution of society which has moved individuals back into the ‘state of war’». Therefore, it would not be a situation bordering to a reversion to *bellum omnium*, but a real *bellum omnium*. In sum, according to Francioni, Beccaria admits of no intermediate positions between the state of nature and the rule of law. The social contract cannot be “suspended”; it is either in existence and binding, or it does not exist any longer, and society has reverted to the state of nature. For Beccaria, therefore, the death penalty is always illegitimate<sup>46</sup>.

<sup>45</sup> Audegean, *Cesare Beccaria, filosofo europeo*, chapter «Giustizia e utilità», in particular p. 123; C. Beccaria, *Des délits et des peines. Suivi de Avis au sujet de la peine de mort*, Préface, traduction et notes de Ph. Audegean, Note de L. Ferrajoli, Payot et Rivage, Paris, 2014, note on pp. 130-121; D. Ippolito, *Contratto sociale e pena capitale: Beccaria vs Rousseau*, «Rivista internazionale di filosofia del diritto», 4, 2014, pp. 607 ff.; N. Campagna, *Sonnenfels, Beccaria et la peine de mort*, in Ph. Audegean and L. Delia (eds.), *Le moment Beccaria. Naissance du droit pénal (1764-1810)*, Liverpool University Press, Liverpool 2018 («Oxford University Studies in the Enlightenment»), pp. 195 and 203-204. Francioni mentions K. Ladd, *Penser la peine dans la souveraineté et dans l'époque: Situation de l'argumentation abolitionniste dans Des délits et des peines de Cesare Beccaria*, in L. Delia et G. Radica (eds.), *Penser la peine à l'âge des Lumières*, «Lumières», 20, 2012, pp. 101-120: 108 ff.; and P. Costa, *Lo ius vitae ac necis alla prova: Cesare Beccaria e la tradizione contrattualistica*, «Quaderni fiorentini per la storia del pensiero giuridico moderno», 44, 2015, 2, pp. 817-895.

<sup>46</sup> G. Francioni, *Beccaria filosofo utilitarista*, in *Cesare Beccaria fra Milano e l'Europa*, Atti del convegno di studi per il 250° anniversario della nascita promosso dal Comune di Milano, Cariplo-Laterza, Milano-Roma-Bari, 1990, pp. 69-87 (A slightly modified French translation appeared under the title of Beccaria, *philosophe utilitariste*, in *Le bonheur du plus grand nombre. Beccaria et les Lumières*, sous la direction de Ph. Audegean, et al., ENS Éditions, Lyon 2017). See also Fran-

I have briefly summarized the two current most relevant lines of interpretation, not in order to enter a debate which lies outside both the aim of this article and my field of competence, but to indicate the hermeneutic difficulty of this passage and the questions at stake. This, in order to highlight the fact that the verbal formulation of this passage contains an ambiguity which, as we shall see, the English translator seemed to be aware of. As he also seemed to be aware of the philosophical implications of this ambiguity. Interestingly, he introduced changes which framed a text unambiguously consonant with one of the two interpretative options exposed above – most precisely with Francioni’s.

So much for the moment about the first case («primo motivo»). The second case («secondo motivo») – also mentioned in the third paragraph of the Italian original – hypothesizes a justification of the death penalty in a situation in which the State is functioning normally and the social contract is binding. This case refers to a possible deterrent role of the death penalty. The question Beccaria implicitly asks here is: would the death penalty be justified if it served to dissuade citizens from committing crimes? And the answer, to which the rest of the chapter is devoted, is an unwavering no. On historical and psychological grounds, Beccaria proves that the death penalty has no deterrent capacity.

This conclusion is crystal clear. However, the sentence «secondo motivo, per cui può credersi giusta, e necessaria la pena di morte» contains a term which looks problematic. The use of the word «giusta» (applied to the two cases) risks destroying retrospectively the clarity of the argument developed in the first paragraph of the chapter, as it seems to imply that if proved necessary, the death penalty becomes «giusta», i.e., rightful, legitimate. But the first paragraph had stated that the death penalty is never «giusta», never founded on a right to punish deriving from the social contract, and is therefore always illegitimate. Does Beccaria use that word inadvertently, or is it a deliberate choice? Is it a «terminological imprecision»<sup>47</sup>, or a precise option? What is certain is that the presence in this sentence of the word «giusta» – legitimate – blurs the interpretation and ushers in controversial questions.

To sum up: as framed in the original Italian text, the first of the two cases – the two «motivi», possible exceptions to a total abolition of the death penalty – presents an ambiguity which requires strong hermeneutic moves. As to the sentence mentioning the second case, although it provides a hypothesis which will be unambiguously rejected in the rest of the chapter, it nonetheless hosts

cioni, «Ius» e «potestas», cit., p. 43.

<sup>47</sup> Francioni, «Ius» e «potestas», cit., note 33, p. 19.



a problematic word. It is, as I said, the term «giusta» – legitimate – applied on grounds of necessity to both cases. Again, an effort of interpretation is called for, which is all the more necessary here as the ambiguity bears on fundamental aspects of Beccaria's thinking.

With this in mind, let us now read the 1767 English translation:

*But the punishment of death is not authorised by any right; for I have demonstrated that no such right exists. It is therefore a war of a whole nation against a citizen, whose destruction they consider as necessary, or useful to the general good. But if I can further demonstrate, that it is neither necessary nor useful, I shall have gained the cause of humanity. The death of a citizen cannot be necessary, but in one case. When, though deprived of his liberty, he has such power and connections as may endanger the security of the nation; when his existence may produce a dangerous revolution in the established form of government. But, even in this case, it can only be necessary, when a nation is on the verge of recovering or losing its liberty; or in times of absolute anarchy, when the disorders themselves hold the place of laws. But in a reign of tranquility [...] there can be no necessity for taking away the life of a subject<sup>48</sup>.*

A number of modifications attract our attention, some of them highly significant if viewed in light of present-day debate and of the interpretative options illustrated above. The sentence «But the punishment of death is not authorised by any right; for I have demonstrated that no such right exists», for instance, is not an exact translation of: «Non è dunque la pena di morte un Diritto, mentre ho dimostrato che tale, essere non può», and sounds slightly more assertive, admitting of no exception that might intervene even in the future. This change, however, could be attributed simply to the unavoidable differences entailed by all translations. On the contrary, the addition of «to the general good» already reveals a precise interpretative perspective, soon to be endorsed by other occurrences. The words: «even in this case, it can only be necessary» correspond only partly to «La morte di qualche Cittadino diviene dunque necessaria quando la nazione ricupera o perde». «Can only» restricts the field of application to a particular case only, whereas «diviene dunque necessaria» states a necessity but does not point to its limits.

Pride of place in an abolitionist perspective must be given, however, to the translation of the words «o nel tempo dell'anarchia», which become «or in times of absolute anarchy». No reason of translation technique whatsoever required the insertion here of the word «absolute», evidently derived from a hermeneutic option. The sen-

tence can now only be interpreted as denying all possibility of inflicting the death penalty within the social contract, not even under special circumstances. The translator seems to have tried to remove the ambiguity of the 'first case' by taking a stride in the abolitionist direction. «Absolute anarchy» definitely indicates a condition of total dissolution of the social contract, with a reversion to the state of nature. It conveys, more directly, the idea that, both in a normal and in an exceptional state of things, under the social contract the death penalty is always illegitimate and should never be inflicted.

Another change also strikes the reader. It is the translator's omission of the clause «unless his death were the only real way to deter others from committing crimes. And this is the second reason for believing that the death penalty could be just and necessary<sup>49</sup> («se non quando [...] necessaria la pena di morte»)). Commenting above on the Italian original of this passage, we have not ignored the ambiguity introduced by the presence of the word «giusta». Eliminating the sentence with the explicit mention of a second case as well as the word «giusta» (legitimate), the ambiguity concerning a possible clash of paradigms disappears altogether. This does not mean that the content of the second case has been erased, since the confutation on historical and psychological grounds of the dissuasive capacity of the death penalty is amply provided for by the rest of the chapter. Again, the English translation significantly sweeps away all ambiguity, taking a precise stance in the same direction as the other modifications. The meaning becomes unequivocal: «in a reign of tranquility», when the social contract is functioning, under no circumstance whatsoever – not even when such contract is at risk of dissolution – can the death penalty be considered legitimate, necessary or useful.

It is worth noting, incidentally, that if the second «motivo» has disappeared also in Morellet, the case of other modifications is different. Take, for example the corresponding French passage<sup>50</sup>:

*La peine de mort n'est donc autorisée par aucun droit. Elle ne peut être qu'une guerre de la nation contre un Citoyen dont on regarde la destruction comme utile et nécessaire à la conservation de la Société. Si donc je démontre que, dans l'état ordinaire de la Société, la mort d'un Citoyen n'est ni utile, ni nécessaire, j'aurais gagné la cause de l'Humanité. Je dis dans l'état ordinaire; car la mort d'un Citoyen peut être nécessaire en un cas; et c'est lorsque, privé de sa liberté, il a encore des relations et une puissance qui peuvent troubler la tranquillité de la nation; quand*

<sup>48</sup> *An Essay on Crimes and Punishments*, cit., pp. 103-104.

<sup>49</sup> *On Crimes and Punishments and Other Writings*, cit., p. 52.

<sup>50</sup> In chapter XXVIII of the Italian original and the English translation; in chapter XVI of the French translation, pp. 98-99.

*son existence peut produire une révolution dans la forme du gouvernement établi. Ce cas ne peut avoir lieu que lorsqu'une nation perd ou recouvre sa liberté, ou dans les temps d'Anarchie, [...] Mais pendant le règne tranquille de la Législation [...] il ne peut y avoir aucune nécessité d'ôter la vie à un Citoyen.*

The French and the English translations are similar, but not identical. Morellet also removes the sentence which mentions a second case and contains the word "giusta"; and he also uses the expression «ce cas ne peut avoir lieu que» which is conceptually similar to «but, even in this case, it can only» and is different from «divien dunque necessaria quando». However, he does not add the word «absolute» to «anarchy», and exhibits other differences which reveal a conceptual distancing of the two translations.

We can thus conclude that the English translator did not only choose at times the French and at other times the Italian texts as his sources, but also inserted modifications of his own to be found in neither text. Therefore, he was not guided simply by a search for *clarity* but also by a philosophical *vocation* and a *strategy*, which were purely his own and which prompted him to dissolve the ambiguity of the original Beccarian text in a coherently radical abolitionist direction.

#### A BRIEF NOTE ON DETERRENCE IN BRITISH EIGHTEENTH-CENTURY PENAL PRACTICE.

Deterrence was a sore point of eighteenth-century British criminal law and practice. As deterrence was a core principle in Beccaria's *Dei delitti e delle pene*, it was also the primary justification for the application of punishment in Britain. However, the two conceptions were miles apart. If Beccaria suggested deterrence through certainty of punishment, celerity, equality and penal parsimony, the British penal system mostly conceived it as expressed by William Paley in *The Principles of Moral and Political Philosophy*. Along with Beccaria, Paley thought that the «proper end of human punishment is, not the satisfaction of justice [Paley's terminology for revenge of the State], but the prevention of crimes»<sup>51</sup>. Differently from Beccaria, however, his conclusions were that, since punishment could not be certain, it must be exemplary. Thus, punishment should not be proportionate to the severity of the crime, but to the ease with which it was committed. This justified the application of the death penalty not only for murder, but

also for minor offenses such as poaching, forgery, stealing objects of little value from shops and houses, acts of theft difficult to prevent because these forms of property were so widely exposed to risk. Hence, the only way to protect property and deter crime was the threat of a terrifying punishment.

Of course, these ideas were not shared by everybody in Britain, and debate had started before Beccaria, to continue for years also fuelled by his book<sup>52</sup>. However, it was only in 1808 that Samuel Romilly succeeded in securing the repeal of the statutes which imposed the death penalty for small thefts committed without violence. In 1820, bills to abolish capital punishment for wounding cattle and destroying trees were passed by the House of Commons but not by the House of Lords. And only in 1832 was the punishment of death abolished for stealing a horse or a sheep<sup>53</sup>.

In the light of this situation, the omission of the sentence mentioning a second «motive» in chapter XXVIII, could also be explained as an attempt to remove a linguistic ambiguity which might open up a space, albeit not intended by Beccaria, for a hypothetical future justification of the death penalty on grounds of deterrence.

On this subject, the English translations exhibits another discrepancy with the Italian original. At the end of chapter XLVI, titled «Of Pardons», the translation has the following passage:

*A small crime is sometimes pardoned, if the person offended chuses [sic] to forgive the offender. This may be an act of good nature and humanity, but it is contrary to the good of the public. For, although a private citizen may dispense with satisfaction for the injury he has received, he cannot remove the necessity of example. The right of punishing belongs not to any individual in particular, but to society in general, or the sovereign. He may renounce his own portion of this right, but cannot give up that of others*<sup>54</sup>.

More coherently with its subject, in the Italian original this passage is located in chapter XXIX («Della cattura»/«Of Imprisonment»)<sup>55</sup>. By moving it to a more

<sup>52</sup> Draper, *Cesare Beccaria's influence on early discussions of punishment, 1764-1789*, cit., p. 183.

<sup>53</sup> Maestro, *Cesare Beccaria and the Origins of Penal Reform*, Temple University Press, Philadelphia 1973, pp. 136-137. For a broad perspective, see L. Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, vol. I. *The Movement for Reform (1750-1833)*, Stevens, London 1948.

<sup>54</sup> *An Essay on Crimes and Punishments*, cit., p. 177.

<sup>55</sup> *Dei delitti e delle pene*, Harlem 1766, cit., VI, p. 139 (cap. XXIX. «Della cattura»): «Alcuni liberano dalla pena di un piccolo delitto quando la parte offesa lo perdoni, atto conforme alla beneficenza ed all'umanità, ma contrario al bene pubblico, quasi che un Cittadino privato potesse egualmente togliere colla sua remissione la necessità dell'esempio, come può condonare il rifacimento dell'offesa. Il diritto di far punire non è di

<sup>51</sup> W. Paley, *The Principles of Moral and Political Philosophy*, Printed for R. Faulder, London 1785, p. 1.

visible position, just before the conclusions (XLVII, «Conclusion»), the translator evidently wanted to call attention to it.

This passage, in fact, refers to what was a common practice in Britain, and questions it on theoretical grounds. For reasons of convenience – since the offended party had to face all the expenses for capture and prosecution – and for reasons of empathy with the people who, out of necessity, stole goods of little value and nonetheless risked death on the scaffold, the victims of thefts often did not prosecute the offenders<sup>56</sup>. This was one of the reasons that condemned the British penal system to great uncertainty. Certainty of punishment is what this translation highlights here in accordance with Beccaria's tenet and in opposition to the English practice of random prosecution and discretionary sentencing. Certain but mild punishments, as recalled in the concluding chapter, which the English translator transposes with great care and precision to the last sentence, evidenced in italics as in the Italian original:

*That a punishment may not be an act of violence, of one, or of many against a private member of society, it should be publish [public] immediate and necessary; the least possible in the case given; proportioned to the crime, and determined by the laws.*

## CONCLUSIONS.

The results of the collation of the first English translation of *Dei delitti e delle pene* with the Italian original and the French version brings me to conclusions along two lines. One specifically relates to the actual text that introduced Beccaria in the English-speaking world. The other faces the more general question of what information may be gleaned from the peculiar unfaithfulness of eighteenth-century translations.

---

un solo, ma di tutti i Cittadini, o del Sovrano. E gli non può che rinunciare alla sua porzione di diritto, ma non annullare quella degli altri». The French version has this passage in chapter XX. «Que la punition doit être certaine et inévitable. Les grâces»: «Quequefois on s'abstient de punir un léger délit, lorsque l'offensé le pardonne; acte de bienfaisance, mais contraire au bien public. Un particulier peut bien ne pas exiger la réparation du dommage qu'on lui a fait, mais le pardon qu'il accorde ne peut détruire la nécessité de l'exemple. Le droit de punir n'appartient à aucun Citoyen en particulier, mais à tous et au Souverain. L'offensé peut renoncer à sa portion de ce droit, mais non pas ôter aux autres la leur» (p. 132). It should be remembered that the chapter «Delle grazie» appeared in the fifth edition for the first time, and for this reason it was not in Morellet's version, which was based on the third edition, albeit with some additions sent by the author to the translator before the fifth edition was in print. See page 000 here above (PER REDAZIONE: p. 000).

<sup>56</sup> J.M. Beattie, *Crime and the Courts in England. 1660-1800*, Clarendon Press, Oxford 1986, pp. 35-73 (ch. II. «Prosecution»).

As to the text, the collation enabled me to define once and for all the question of the sources for the 1767 English translation. There were no doubt two sources. One source was an Italian 1766 edition (either the sixth edition HARLEM, et se vend A PARIS, Chez Molini Libraire, Quai des Augustins; or, the sixth edition HARLEM, 1766), and the other was the French version. The collation also revealed that the English translation contains relevant, albeit not especially frequent, differences in form and content, which appear in neither source. In these cases, the original Italian text was consistently and coherently modified. Examining an excerpt from chapter II («Of the Right to punish»), I found that the translation eliminated an ambiguity which ran the risk of being interpreted as acknowledging a connection between law and force, and of placing the origin of law in the utility of the 'greatest number' (which, differently from «common utility», might counteract penal parsimony, consenting penal excess). I also examined passages from chapter XXVIII («Of the Punishment of Death»), realizing that the changes introduced aimed at rendering the text unequivocally and thoroughly abolitionist. Interestingly and unexpectedly, these modifications involve questions focused also by present-day debate over the interpretation of these passages of the Italian text.

Translations are first of all interpretations. One can therefore deduce that such relevant changes represent, as it were, a kind of taking sides in the eighteenth-century Beccarian controversy, and that they can thus provide clues for the understanding of the project this translation was involved in and the task it intended to fulfil. It is worth noting that this translation certainly had a wide audience from the start, considering the fact that many editions were published in Britain and in the overseas colonies in the first few years after its initial appearance. Moreover, its first publisher John Almon was politically involved and would soon publish books and a periodical for the American revolutionaries.

Much remains to be investigated, but I am convinced that the information provided here may well offer a useful lead for further discoveries. A knowledge of how the text which disseminated Beccaria's ideas in the English-speaking world was actually framed may help to clarify aspects of its reception, with the reasons for its rejections and acceptances. Which text, for instance, triggered the Pennsylvania experiment? Was it Beccaria's original, the French translation or the English translation? As we have seen, they are different in crucial points, and the question therefore is anything but pointless.

So much for the conclusions focusing directly on Beccaria's text. The second line of considerations pertains to a more general perspective. As is well known,

an important dimension of eighteenth-century cosmopolitanism fed on translations. In many cases, the French language functioned as a «clearing-house» for books written in other languages, which were translated first into French and subsequently into other European languages. This was probably the most common procedure. But, as we have seen in the case of *On Crimes and Punishments*, not the only one; other procedures were followed as well. Were there many such hybrid cases? Since, in the eighteenth century, translations were a highly effective channel for the dissemination of texts, promoting the circulation of ideas and of the new languages of politics, law, philosophy, economy, science and medicine; and since they were notoriously unfaithful to the original and more target-oriented than in later times, one should expect interesting information to be gleaned through close examinations of translations. What has surfaced in our enquiry could be taken as an example. I am firmly of the view that highly relevant but otherwise elusive details remain to be brought to light by probing the folds of the changes which eighteenth-century translations made to texts.

As a corollary to the *intentio auctoris*, the intentions which underpinned the work of eighteenth-century translators are a crucial fact which cannot be ignored if we are to achieve a proper understanding of the eighteenth-century transmission of texts into foreign cultural environments.